IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.777 of 2001

Kathir @ Kathiravan ..Appellant

Vs.

State rep by
The Inspector of Police,
Mayiladuthurai.
(Cr.No.1452 of 1999) ..Respondent

Prayer:- This appeal has been preferred against the judgment dated 16.7.2001 made in S.C.No.102 of 2000 on the file of the Additional Sessions Judge, Nagapattinam.

For Appellant :Mr.T.R.Sivaram
for Mr.K.V.Sridharan

For Respondents :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.102 of 2000 on the file of the Additional Sessions Judge, Nagapattinam.

2.The case of the prosecution in a nutshell is that on 1.12.1999 at about 7.15 pm the accused with an intention to cause death of Ramesh, had stabbed him on the chest with a knife causing instantaneous death.

3.The learned Judicial Magistrate after securing the accused by way of summons furnished copies under Section 207 of Cr.P.C., and since the case is triable by the Court of Sessions, the learned Judicial Magistrate has committed the case under Section 209 of Cr.P.C., to the Court of Sessions. On appearance before him, the learned trial Judge had framed charges under Section 302 IPC and when questioned the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.15 were examined, Ex.P.1 to Ex.P.19 were exhibited and M.O.1 to M.O.15 were marked.

4.P.W.1 is the complainant, who is the sister's husband of the deceased. According to P.W.1, the deceased was a taxi driver and on 1.12.1999 at about 7.15 pm near the old bus stand at Mayiladuthurai

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

deceased Ramesh was conversing with his friends viz. Santhanam, Visu and Senthil and that he was also at that time talking to them and suddenly he heard a noise to the effect that the deceased Ramesh was stabbed by some one. Immediately he rushed to the place of occurrence where he saw Ramesh was lying on the ground with stab injury on his left chest. Immediately he removed the injured Ramesh in an Ambassador Car bearing registration No.5950 to the government hospital at Mayiladuthruai along with P.W.2-Santhanam, P.W.3-Visu, Senthil and Sundaram and the Doctor at government hospital, Mayiladuthurai, on seeing Ramesh pronounced him brought dead. Immediately he informed the father of the deceased Ramesh and prepared the complaint Ex.P.1 and presented the same before the police. He had also handed over his blood stained dothi M.O.1 and M.O.2-blood stained shirt, which were seized under Ex.P.2, form-95.

5.P.W.2 has not supported the case of the prosecution.

6.P.W.3 is an eye witness to the occurrence. According to him, the occurrence had taken place at about 7.00 pm near Mayiladuthurai old bus stand about 1 ½ years back from the date on which he was deposing before the Court. At the time of occurrence, according to P.W.3, the deceased Ramesh was sitting in the car and at that time accused Kathiravan came their to whom the deceased Ramesh enquired where he was going. The accused answered Ramesh that he his going to Kollumankudi to see his wife. Ramesh immediately corrected Kathiravan by saying that he would not say her as his wife but he should say as she is his concubine. Thereupon there arose a quarrel between the accused and the deceased and the deceased Ramesh caught hold of the accused Kathirvavan and gave a blow on the left side of the face of the accused Kathiravan. Immediately the accused Kathiravan took out a knife from his waist and stabbed on the left chest of Ramesh. Immediately he(P.W.3) along with Sivamani, Kumar (P.W.6) and Sridhar chased the accused but the accused took to his heels with the weapon used in the occurrence. When he returned to the place of occurrence, he was informed that Ramesh was taken to the hospital and later he came to know that Ramesh breathed his last. P.W.3 has identified M.O.3 as the knife used by the accused at the time of the occurrence for stabbing the deceased.

7.P.W.4 would corroborate the evidence of P.W.3 to the fact that at the time of occurrence the accused had stabbed the deceased on his left chest with a knife, which resulted in the victim death. He would further depose that at the time of occurrence the street lights were burning at the place of occurrence.

8.P.W.6 is also an another witness to the occurrence, who knows both the deceased as well as the accused. He would corroborate the evidence of P.W.1 and P.W.3 to the fact that on 1.12.1999 at about 7.30 pm, while he was standing near the old bus stand at Mayiladuthurai and was talking to P.W.4-Sridhar and P.W.3-Visu and at that time the accused came in that way and there was a quarrel between the accused and the deceased and in the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

course of the transaction, the accused caught hold of the shirt of the deceased and the deceased landed some blows on the face of the accused. Immediately the accused took a knife from his waist and stabbed Ramesh on the left chest resulting the injured falling on the ground and the injured Ramesh was immediately taken to the hospital where he was pronounced dead.

9.P.W.14 is the Sub-Inspector of Police, who had registered the FIR on the basis of the complaint-Ex.P.1 preferred by P.W.1 under Mayiladuthuram Police Station Cr.No.1452 of 1999 under Section 302 IPC. Ex.P.17 is the FIR. He has also recovered the blood stained dothi belonging to P.W.1 and the blood stained full hand shirt under Form-95. He had sent the express FIR to the concerned officials including the Judicial Magistrate.

10.P.W.15 is the Investigating Officer, who had visited the place of occurrence at about 9.15 pm on 1.12.1999 itself and prepared observation mahazar Ex.P.3 in the presence of P.W.7 and another witness. P.W.7 would admit his signature in Ex.P.3 as Ex.P.4. From the place of occurrence P.W.15 has recovered M.O.12- a pare of leather chappels, M.O.13(series) two white colour buttons, M.O.14-blood stained cement flooring, M.O.15-sample cement flooring under Ex.P.18-mahazar. He has examined the witnesses and recorded their statement. He had conducted the inquest on the corpse of Ramesh at about 11.00 pm on the same day in the presence of the witnesses. Ex.P.19 is the inquest report. Through P.W.13 the corpse was sent by P.W.15 for post-mortem. P.W.13 has identified the corpse to the doctor, who had conducted autopsy and after the autopsy he had recovered M.O.4-blood stained pant, M.O.5-belt, M.O.6-wrist watch, M.O.7-silver ring, M.O.8-blood stained shirt, M.O.9-blood stained banian, M.O.10-waist rob, M.O.11-blood stained towel from the corpse and handed them over to P.W.15 under his special report Ex.P.15.

11.P.W.12 is the doctor, who had conducted post-mortem on the corpse of Ramesh. He had seen the following injury on the corpse:-A spindle shaped gap stab injury on the left chest measuring 5 x 3 ½ x 9 cms. The said injury was leading from left coller bone to the left lung region through the left side of the second rib. The said injury had caused impression on the left lung to an extent of 6 cm. 1,200 mls of blood was found clot in the said region. The second rib on the left side was found fractured. The right side of the lung was found pale. The doctor has opined that due to the injury the deceased had sustained in the heart and also due to the hemorrhage, the victim had died about 12 to 15 hours prior to the autopsy. Ex.P.14 is the post-mortem report. The doctor has opined that the injury No.1 would have caused with a weapon like M.O.3 and that the said injury is sufficient in the ordinary course of time to cause death.

12.The investigating officer P.W.15 had arrested the accused on 4.12.1999 at about 10.30 am near Ananthandavarpuram railway gate and has recorded the voluntary confession statement of the accused in the presence

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

of P.W.8-Saravanan and also another witness by name Maheswaran. The admissible portion of the confession statement of the accused is Ex.P.5. On the basis of the confession statement, the accused had taken him and the other witnesses to Vaitheeswaran Kovil railway station and from there below a heap of stones he took out M.O.3-knife used by him for committing the crime, which was recovered by P.W.15 in the presence of P.W.8 and another witness Mahesh under Ex.P.6-mahazar. P.W.8-Saravanan, who is a witness in Ex.P.6 also corroborates the evidence of P.W.15 on his score. He had sent the material objects connected with this case to the Court under Form-95, with a letter of requisition to send the same for chemical analysis.

13.P.W.10 is the head clerk of Judicial Magistrate No.I, Mayiladuthurai. According to him, as per Ex.P.9-requisition, the material objects connected with this case were sent to the Forensic Science Laboratory for chemical analysis with a requisition letter from the Court under Ex.P.10. After analysis, Ex.P.20-chemical analyst's report was received from the Forensic Science Laboratory on 20.12.1999 and another report Ex.P.11 was received on 17.12.1999 and Ex.P.12, dated 22.1.2000 was received in the Court.

14.The accused was produced before the Judicial Magistrate for judicial remand by P.W.15. He has examined the other witnesses and recorded their statement and after completing the investigation P.W.15 has filed the final report on 21.1.2000 against the accused under Section 302 IPC.

15.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied his complicity with the crime. The accused has not examined any witness or exhibited any document on his side. After going through the evidence both oral and documentary the learned trial judge has come to the conclusion that the accused is liable to be convicted under Section 304 (ii) IPC and accordingly convicted and sentenced the accused to undergo 7 years RI and slapped a fine of Rs.5,000/- with default sentence. Aggrieved by the findings of the learned trail Judge the accused had preferred this appeal.

16.Now the point for determination in this appeal is whether the conviction and sentence passed by the learned trial judge under Section 304(ii) IPC against the accused is sustainable for the reasons stated in the memorandum of appeal?

WEB COPY

17.The Point:- 17(a) The learned counsel appearing for the appellant Mr.T.R.Sivaram (junior of Mr.K.V.Sridharan) took enormous pain in taking this Court through the entire evidence. The learned counsel Mr.T.R.Sivaram would point out some of the discrepancies found in the investigation. The learned counsel would represent that even according to the prosecution P.W.1 is not an eye witness to the occurrence, but P.W.15, investigating officer, in his cross-examination would depose that P.W.1-

https://hcservices.ecourts.gov.in/hcservices/

Ananthan is an eye witness and even in his statement recoreded under Section 161(3) of Cr.P.C., P.W.1-Ananthan has stated that he is an ocular witness to the occurrence. The learned counsel would further submit that even the trial Court in it's judgment in more than one occasion has referred to P.W.1 as an eye witness to the occurrence. A mistake committed by the investigating officer and also Court in referring P.W.1 as an eye witness in 161(3) Statement as well as in the judgment respectively will not vitiate the entire case of the prosecution. P.W.1-Ananthan neither in his evidence nor in the complaint-Ex.P.1, preferred by him, has stated to have witnessed the occurrence. The learned counsel for the appellant would further state that according to P.W.1, at the time of occurrence he was conversing with P.W.2, P.W.3, P.W.4 & P.W.6 near the place of occurrence at old bus stand, Mayiladuthurai, but at the same time P.W.3, P.W.4 & P.W.6 were examined as eye witnesses. According to the prosecution, P.W.1 is said to have engaged in the conversation with P.W.1, P.W.2, P.W.3, P.W.4 & P.W.6 at the place of occurrence. But even according to P.W.1, he has not witnessed the occurrence, whereas P.W.3, P.W.4 & P.W.6 would depose that they have witnessed the occurrence according to the learned counsel for the appellant it cannot be believable, in the event P.W.2-another eye witness, turned hostile. But while conversing in a public place i.e., near a bus stand it cannot be expected that all the persons to have witnessed the occurrence. Out of P.W.1, P.W.2, P.W.3, P.W.4 & P.W.6, who were conversing at the time of occurrence, the occurrence was witnessed only by P.W.3, P.W.4 & P.W.6 according to their evidence. The fact that P.W.1 has not witnessed the occurrence whereas P.W.3, P.W.4 & P.W.6, according to the prosecution, alone have witnessed the occurrence cannot be believed, according to the learned counsel for the appellant, cannot hold any water. Further the fact that P.W.2 has failed to support the case of the prosecution will not derive us from taking any adverse inference against P.W.3, P.W.4 & P.W.6. There is no delay in preferring the complaint by P.W.1 and registering the FIR by the police. The evidence of P.W.3, P.W.4 & P.W.6 is that at the time of occurrence, there was a quarrel between the accused and the victim and the victim had landed blows on the face of the accused, but immediately the accused took out M.O.3-knife from his waist and stabbed the victim on his left chest which proved to be fatal. The evidence of P.W.3, P.W.4 & P.W.6 in this aspect has been corroborated by the medical evidence of P.W.12, the post-mortem doctor. According to P.W.12, the doctor, who had conducted post-mortem and issued Ex.P.14, post-mortem certificate, the single stab injury found on the corpse of the deceased is sufficient in the course of nature to cause death to the victim. It is in evidence that the stab injury is caused on the left chest had extended to the left lung of the deceased causing fracture to the second rib on the left side of the chest of the victim. Under such circumstances, it cannot be said that the findings of the learned trial judge that the accused is guilty under Section 304(ii) IPC is erroneous.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

17(b)The learned counsel for the appellant would contend that the sentence awarded to the accused under Section 304(ii) IPC is on the higher side and while awarding the sentence the learned trial judge has failed to consider as there was only one stab injury inflicted by the accused and also failed to consider the age of the accused and the sudden quarrel which arose between the accused and victim immediately before the occurrence. Relying on the dictum of this Court in 1981 L.W. Crl 136 (Jabamalai Royappan and another In re:), the learned counsel Mr.T.R.Sivaram, appearing for the appellant would contend that a lesser sentence of two years RI may be imposed in stead of 7 years RI. The facts of the above cited by the learned counsel for the appellant is that:

> "the accused in that case were charged under Section 302 r/w 34 IPC. At the time of occurrence the accused in that case the victim, who was a man of questionable character and spendthrift, was living alone after his wife had deserted him. Two years prior to the occurrence, the victim had developed illicit intimacy with one Siluvaimuthu Ammal of Puthur Village, the wife of P.W.7, and the same was continued till the date of occurrences. On the date of occurrence, at about 7.30 am, A1 who is an ex-police constable and A2 who is a cooly, went to the tea shop of P.W.1 and took tea. At that time, P.W.6 also came there besides the deceased. At that time, the victim had complained to P.W.6 that A1 had beaten him on the previous night. A1, on being enquired by P.W.6, replied that he had done so, because the victim/deceased came to his village in the odd hours with apple only to bring disgrace to the villagers. Thereafter, both the accused tripped the victim thereby making him fall down. After the victim had fallen down, A1 held the victim to the ground by pressing his left palm on the chin of the victim and fisted on the face and chest of the victim with his right hand and A2 kicked on the stomach and the flank of the victim, which resulted in the death of the victim. The accused faced a trial under Section 302 IPC.
>
> The trial Court convicted the accused and sentenced them to undergo life imprisonment under Section 302 IPC. But a Bench of this Court, on appeal, held that the nature of the offence will squarely attract a punishment under Section 304(ii) IPC and accordingly convicted and sentenced the accused to undergo 2 years RI in stead of life imprisonment.

In the above said dictum it is to be noted that both the accused, at the time of committing the crime, have assaulted the victim only with hand and no weapon was used. Only under such circumstances, taking a lenient view, this Court in the above said dictum has levied the sentence of 2 years imprisonment. But in the case on hand admittedly the accused had used M.O.3-knife in committing the crime.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

17(c)The learned counsel relying on 2005 SCC (Cri) 1050 (Raja Ram Vs. State of Rajasthan), would contend that the prosecution has failed to treat P.W.1 as hostile witness since he has not supported the case of the prosecution as per the evidence of P.W.15. P.W.15, as I have already discussed, has stated in the cross-examination that P.W.1 before him (P.W.15) has stated to have seen the occurrence. But before the Court he has not deposed as he has seen the occurrence. It is pertinent to be noted here that neither in Ex.P.1-complaint preferred by P.W.1 nor before the Court P.W.1 has stated that he has seen the occurrence. Under such circumstances, on the basis of the statement of P.W.1 recorded under section section 161(3) of Cr.P.C., it cannot be said that P.W.1 is an eye witness and deviated from the case of the prosecution. So the dictum in 2005 SCC (Cri) 1050 (Raja Ram Vs. State of Rajasthan), which lays the principle that "a prosecution witness who did not support the case of the prosecution if not declared hostile the evidence of such witness if relied upon by the defence would bind the prosecution" cannot be applicable to the facts of the case on hand.

17(d)The learned Additional Public Prosecutor relying on 2007(3) SCC 119 (Mohd.Shakeel Vs. State of A.P.), would contend that in a case of similar nature the Honourable Apex Court have ordered six years RI to an accused who has been convicted under Section 304(ii) IPC setting aside the life imprisonment and in that case the accused was in custody from the year 1999 till 2006, when the appeal was disposed of by the Honourable Apex Court.

18.The other ratio decidendi relied on by the learned Additional Public Prosecutor is 2006(2) MLJ (Crl) 1023 (Bunniala Chaudhary & Others vs. State of Bihar), where in a case of similar nature the Honourable Apex Court has awarded 5 years RI for an accused who has been charged under Section 304(ii) IPC. The relevant observation of the Honourable Apex Court in the above said dictum runs as follows:-

> "We have given our thoughtful and anxious consideration to the rival contentions of the learned counsel. The next question is what is the offence which is brought home to Bunnilal Chaudhary(A1)? It is not in dispute that the injury inflicted on the left side of the chest of the deceased is single one. On examination, Dr.Vijay Kumar found the injury situated above nipple on the left side of the chest extending 1" x ½ " penetrating wound. On dissection, left lung was fond penetrated. Dr.Vijay Kumar has not opined that the injury was sufficient in the ordinary course of nature to cause death. That was not even stated to be likely to cause death. No attempt was made by Bunnilal Chaudhary to cause serious injury on any vital part of the body of the deceased. There was no motive or intention of Bunnilal Chaudhary to have murdered Shambhu Raut. Therefore, the question is whether the offence can be said to be covered by Clause (iii) of Section 300 of the IPC.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

That Section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts:- the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with, because the injury which was intended to be caused was the one which was found on the person of Shambhu Raut. But the second part, in our opinion, is not fulfilled because but for the fact that the injury caused had penetrated the lung, death might not have ensued. In other words, looking at the matter objectively, the injury, which Bunnilal Chaudhary intended to cause, did not include specifically the cutting of the left lungs but to wound Shambhu Raut in the neighbourhood of the nipple on left side of chest. Therefore, we are of the opinion that Clause (iii) of Section 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpabe homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Bunnilal Chaudhary did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Bunnilal Chaudhary. The matter, therefore, comes within the third part. The Act which was done was done with the knowledge that Bunnilal Chaudhary was likely by such act to cause the death of Shambhu Raut. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 IPC, as culpable homicide not amounting to murder.

We, accordingly, alter the conviction of Bunnilal Chaudhary from Section 302 to Section 304 Part-II, IPC and in lieu of the Sentence of imprisonment for life imposed on him, we impose a sentence of rigorous imprisonment for five years and to pay a fine of Rs.1,000/- with default stipulation of two months simple imprisonment."

The same principle will be applicable to the present facts of the case. It is in evidence in the case on hand that before the occurrence there was a quarrel between the victim and the accused and the victim also caught hold of the shirt of the accused and landed blows on the face of the accused, thereupon the accused got enraged took out M.O.3-knife from his waist and stabbed on the left chest of the victim. The impact was so grave to fracture the second rib of the victim's lung. So the act of the accused will attract the offence under part (iii) of section 299 IPC i.e, with a

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

knowledge that the fatal injury he is causing is likely to cause the death which attracts a punishment under Section 304(ii) IPC. Point is answered accordingly.

19. In fine, the appeal is dismissed, but with the following modification in the sentence imposed by the trial Court in S.C.No.102 of 2000 on the file of the Additional Sessions Judge, Nagapattinam. The accused is convicted under Section 304(ii) IPC and sentenced to undergo 5 years RI in stead of 7 years RI. The fine imposed by the trial Court will sustain. The learned trial Judge is directed to secure the accused to send to prison to undergo unexpended portion of the sentence. Set off is granted under Section 428 of Cr.P.C.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv

To,

1.The Additional Sessions Judge,
Nagapattinam.
2.-do-The District & Sessions Judge,
Nagapattinam.
3.The Judicial Magistrate NoI,
Mayiladuthurai.
4-do-The Chief Judicial Magistrate,
Nagapattinam.
5.ThePublic Prosecutor, High Court, Madras.
6.The Inspector of Police,
Mayiladuthurai, (Cr.No.1452/1999).
7.The Superintendent of Central Prison,
Cuddalore.
8. The District Collector,
Nagapattinam.
9. The Director General Of Police,
Mylapore, Chennai.

1 cc To Mr.K.V.Sridharan, Advocate, SR.43231.

Crl.A.No.777 of 2001

AKR(CO)
RVL 23.07.2007

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/